

UNITED STATES DEPARTMENT OF AGRICULTURE
Rural Utilities Service

BULLETIN 1726-601

SUBJECT: Electric System Construction Policies and Procedures - Interpretations

TO: RUS Electric Borrowers and RUS Electric Staff

EFFECTIVE DATE: Date of Approval

EXPIRATION DATE: Seven years from effective date

OFFICE OF PRIMARY INTEREST: Electric Staff Division

FILING INSTRUCTIONS: This is a new bulletin. File with 7 CFR 1726.

PURPOSE: To clarify certain requirements of 7 CFR 1726, Electric System Construction Policies and Procedures. This bulletin includes no new requirements.

_____/s/_____
Administrator

5/20/96
Date

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CONTRACTS:

Electric System Construction

PROCUREMENT:

Electric System Procurement and Construction

ABBREVIATIONS

CFR	Code of Federal Regulations
NUP	Net Utility Plant
RUS	Rural Utilities Service

1. GENERAL

1.1 The purpose of this bulletin is to clarify certain requirements of 7 CFR 1726, Electric System Construction Policies and Procedures.

1.2 This bulletin contains no new requirements and is intended only to clarify the requirements of 7 CFR 1726, not to modify nor to amend those requirements. In the event of conflict, the requirements of 7 CFR 1726 shall govern.

1.3 As indicated in §1726.12, 7 CFR 1726 applies only to projects that are “...financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects.” Other borrower projects are not subject to the requirements of 7 CFR 1726.

1.4 Some borrowers have expressed concern about using calendar year limits, since one or two large procurements could consume the entire limit, and very small procurements thereafter would be subject to more stringent requirements. This situation is inherent in any calendar year limit. RUS expects each borrower to manage its procurement program by using competitive procurement procedures (e.g., formal competitive bidding) or contract forms not subject to the calendar year limit for large procurements and prudently utilizing the flexibility provided by 7 CFR 1726 for smaller procurements so that the calendar year limits are not exceeded.

1.5 Exhibit I is a summary of the RUS electric contracting procedures in 7 CFR 1726. Since this summary does not include all applicable requirements, 7 CFR 1726 should always be consulted for detailed requirements.

2. QUESTIONS AND ANSWERS

2.1 Question: *What constitutes a calendar year?* Answer: A calendar year runs from January 1 to December 31.

2.2 Question: *Is RUS Form 198, Equipment Contract, required for the purchase of materials of \$500,000 or more?* Answer: No. §1726.50(a) and §1726.76(a) requires the use of RUS Form 198 for equipment purchases of \$500,000 or more, but materials in any amounts may be purchased using RUS Form 173, Materials Contract, or written purchase order. (See §1726.14 for the definitions of equipment and materials.) An RUS Form 198 may be used if desired for material purchases.

2.3 Question: *It appears that some of the limits in 7 CFR 1726 relate to cumulative calendar year amounts and some relate to individual contracts. Is this correct?* Answer: Yes. The cumulative calendar year limits relate exclusively to the type of bidding procedure required or, in one case, permitting the use of RUS Form 790 or 792. Other limits in 7 CFR 1726 relate to individual contracts, including RUS approval of contracts, minor modifications or improvements, and the use of most contract forms.

2.4 Question: *Are the “borrower responsibility” limits in §1726.51(b)(1) (distribution line construction) and §1726.77(b)(1) (substation and transmission line construction) separate individual limits or do they constitute a single limit?* **Answer:** Each of the limits in 7 CFR 1726 is a separate individual limit which is not tied to the other limits.

2.5 Question: *Please clarify the exact determination of the dollar amounts and timing of contracts to be applied to the various yearly limits.* **Answer:** There are several references in 7 CFR 1726 to calendar year limits. For example, §1726.51(b)(1) states:

“It is the responsibility of each borrower to determine the procurement method that best meets its needs to award contracts in amounts of up to a cumulative total of \$250,000 or one percent of NUP, whichever is greater, per calendar year of distribution line construction (including minor modifications or improvements), exclusive of the cost of owner furnished materials and equipment.”

The dollar amount of each negotiated contract to be used in determining compliance with the cumulative yearly limits is the maximum contract price less the cost of owner furnished materials and equipment, if any, included in that amount. The maximum contract price is the amount entered in Article III, Section 1.b. of RUS Form 792, Distribution Line Extension Construction Contract (Labor Only), or the equivalent amount in other contract forms. The date to be used to determine the applicable calendar year is the date of contract, i.e., the date entered in the Acceptance section of RUS Form 792, or the equivalent date in other contract forms.

Since the calendar year limits relate to the use of a particular contract form or bidding procedure, the key element of the requirement is the award of contracts. It is not related to actual payments under the contract nor to the length of the contract period.

2.6 Question: *§1726.51(a)(1)(iii) allows the use of RUS Forms 790 or 792 up to certain calendar year limits. Do executed contracts using these forms count against the cumulative calendar year bidding limits?* **Answer:** The type of form used is not related to the cumulative calendar year bidding limits. For example, if an RUS Form 790 or 792 is used with formal competitive bidding, such a contract would fall under §1726.51(b)(3) and would not apply to the cumulative totals stipulated under §1726.51(b)(1) (borrower responsibility) or §1726.51(b)(2) (multiparty unit price quotations). The converse is also true, e.g., a negotiated contract, even if an RUS standard contract Form 790 or 792 is used, would apply to the cumulative total stipulated under §1726.51(b)(1).

2.7 Question: *§1726.51(a)(1) allows the use of RUS Forms 790 or 792 under certain circumstances. Must one of these forms be used or is an RUS Form 830, Electric System Construction Contract (Labor and Materials), acceptable?* **Answer:** The borrower may choose to use an RUS Form 830 for any distribution line construction.

2.8 Question: *Is there a limit on the number of contracts or the dollar amount of work that may be bid under formal competitive bidding?* **Answer:** There is no limit on formal competitive bidding. RUS encourages the use of formal competitive bidding to the greatest extent practical.

2.9 Question: *How does “minor modification and improvement,” as used in 7 CFR 1726, relate to “minor project” as used in 7 CFR 1721 subpart A, Advance of Funds?* **Answer:** There is no connection between the two terms. The term “minor modifications and improvements” refers to individual projects costing less than \$50,000 and is used only in 7 CFR 1726 and only to determine if a particular contract form is required.

2.10 Question: *§1726.51(a)(3) requires the use of RUS Form 201, Right-of-Way Clearing Contract, when the right-of-way clearing is done separately from work performed under RUS Form 830. Is RUS Form 201 required even for small amounts of right-of-way clearing (less than \$50,000)?* **Answer:** Small amounts of right-of-way clearing (less than \$50,000) can be considered a minor modification or improvement, so §1726.51(a) does not require a specific RUS contract form.

2.11 Question: *What procedure should be followed if fewer than three bids are received under Multiparty Unit Price Quotations or Multiparty Lump Sum Quotations?* **Answer:** Follow the same procedure used for Formal Competitive Bidding under §1726.201(f)(1), i.e., the borrower must determine and document that all reasonable measures have been taken to assure competition prior to awarding the contract. The borrower may, however, elect to reject all bids, make changes in the specification or the qualified bidders list or both, and invite new bids.

2.12 Question: *If both RUS financed construction and non-financed work are included in the same contract, does the entire amount of the contract apply to the bidding limits of 7 CFR 1726 or just the financed portion?* **Answer:** There are two different relevant scenarios:

- a. If a project or group of related projects are partly financed by RUS (e.g., the borrower receives a substantial contribution in aid of construction), the entire contract amount is applied to the limits of 7 CFR 1726, as indicated by §1726.12, which states that 7 CFR 1726 applies to any project that is “...financed, in whole or in part, with loans made or guaranteed by RUS, including reimbursable projects” (emphasis added.) Financed by RUS includes concurrent supplemental loans and reimbursement of general funds.
- b. If the contract includes distinctly separate projects (e.g., right-of-way clearing for new construction and reclearing for maintenance) and each type of work is accounted for separately, then the portion of the contract not financed by RUS would not be applied to the bidding limits of 7 CFR 1726. This applies only when separate, unrelated projects are included under the same contract. The borrower may also use two separate contracts for the two different projects/types of work.

This summary does not include all requirements. See 7 CFR 1726 for detailed requirements.

SUMMARY OF RUS ELECTRIC CONTRACTING PROCEDURES

Facility or Contract Type	Bidding Procedure					Contract Approval
	Borrower Responsibility	Multiparty Quotations	Formal Competitive Bidding	Informal Competitive Bidding	Multiparty Negotiation	
Distribution Line Construction	≤\$250,000 or 1% of NUP/CY	≤\$350,000 or 1.5% of NUP/CY (Unit Price)	All Other	N/A	N/A	N/A
Substation and Transmission Line Construction	≤\$250,000 or 1% of NUP/CY (NTE \$2,000,000)	N/A	All Other	N/A	N/A	≥\$250,000 or 1% of NUP/Contract (NTE \$500,000 for Dist; \$1,500,000 for PS)
Generation Equipment and Construction	≤\$1,500,000	N/A	Yes	Yes	RUS Approval Required	Specific Contracts
Buildings	N/A	≤\$250,000 or 1% of NUP/CY (NTE \$1,000,000) (Lump Sum)	All Other	N/A	N/A	N/A
Communications and Control	≤\$250,000 or 1% of NUP/CY (NTE \$2,000,000)	N/A	N/A	N/A	All Other	≥\$250,000 or 1% of NUP/Contract (NTE \$500,000 for Dist; \$1,500,000 for PS)

Note: All limits are exclusive of the cost of owner furnished materials

Abbreviations: CY - Calendar Year
NTE - Not To Exceed

Dist - Distribution Borrower
NUP - Net Utility Plant

N/A - Not Applicable
PS - Power Supply Borrower